Joint Legislative Budget Committee
Staff Memorandum

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DATE: June 3, 2008

TO: Richard Stavneak, Director

FROM: Steve Schimpp, Deputy Director
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SUBJECT: VOTER PROTECTED SPENDING

You requested information on voter protected spending. Approximately $5.4 billion – $6.1 billion of state spending is voter protected. Of this, $4.2 billion – $4.9 billion are General Fund (GF) monies and $1.2 billion are non-GF. Both are described separately below.

General Fund Voter Protected Spending

In 1998, Arizona voters approved Proposition 105, which stipulates that the Legislature cannot amend statutory language in other ballot propositions unless the amendment "furthers the purposes" of the proposition and is approved by a three-fourths majority vote of the Legislature.

Voter protected General Fund spending affects budgets for the Arizona Department of Education (ADE), Arizona Health Care Cost Containment System (AHCCCS), Arizona State Parks Board (ASPB) and Citizens Clean Election Commission (CCEC). Voter protected spending for these 4 agencies for FY 2009 is estimated at approximately $4.2 billion – $4.9 billion (*see Table 1*), depending on legal interpretations and other factors. The estimate for each affected agency is described further below.

Table 1

Estimated FY 2009 GF Voter Protected Spending (millions)

Agency	Low	High
ADE	$3,159	$3,817
AHCCCS	992	1,042
State Parks Board	20	20
Clean Elections 1/	7	7
Totals	**$4,178**	**$4,886**

1/ This amount can be offset by periodic transfers to the General Fund

ADE

The amount of "voter protected" spending in ADE formula programs varies from approximately $3.2 billion to $3.8 billion (out of $6.0 billion in total state + local formula funding) on an FY 2009 basis, depending on how language in Proposition 301 from the November 2000 General Election is interpreted. A $3.2 billion estimate assumes that voter protection only affects the cost of funding the "base level" (explained below) at the FY 2002 level plus the cost of funding transportation "route miles" at inflation-

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adjusted FY 2009 levels. A $3.8 billion estimate instead assumes that voter protection requires both the "base level" and "route miles" to be funded at inflation-adjusted levels.

Background

Most formula funding for Arizona public schools is linked to a per pupil "base level" amount defined in A.R.S. §15-901(B)(2). Funding generated by the base level plus transportation "route miles" together equal a school district's "revenue control limit" (A.R.S. §15-947). Proposition 301 from the November 2000 General Election requires "the base level or other components of the revenue control limit" to be increased each year for inflation (A.R.S. §15-901.01). This implies that either the base level, route mile funding, or both, must be adjusted annually for inflation.

Differing legal opinions have existed regarding the interpretation of A.R.S. §15-901.01 since it became law. In October 2001, Legislative Council opined that it required the Legislature to increase *either* the base level or route mile funding rates each year. In November 2001, however, the Attorney General opined that it required *both* items to be increased annually. Since FY 2002 (the first year of implementation for Proposition 301), both the base level and route mile funding rates have been increased each year by at least 2%. The $3.2 billion estimate cited above assumes the "or" interpretation, whereas the $3.8 billion estimate assumes "and."

Protected "Base" Funding

Proposition 301 also prohibits the Legislature from ever reducing the base level below the FY 2002 per pupil amount of $2,687. Funding a base level of $2,687 for the currently-projected FY 2009 student count of 1,090,000 pupils would cost approximately $3.0 billion. That cost, plus $0.2 billion for inflating only "route mile" costs since FY 2002 would yield $3.2 billion. If the FY 2002 amount is adjusted for the broader inflation measure, the voter protected base is $3.8 billion.

Unprotected Funding

Under this analysis, approximately $2.2 - $2.8 billion of the $6.0 billion in total K-12 formula funding would be considered *un*protected. This is because Proposition 301 does not appear to protect approximately $1.6 billion for base level "weights" prescribed in statute (including Career Ladder funding) and $0.6 billion for Capital Outlay Revenue Limit (CORL), Soft Capital and charter school "additional assistance" funding combined.

AHCCCS

Proposition 204 from the November 2000 General Election increased the income eligibility limit for AHCCCS programs to 100% of the federal poverty level (FPL) versus various lower thresholds for certain populations (such as parents) previously. The federal government also requires coverage for certain groups above 100% FPL including pregnant women and young children. After adjusting for the 100% FPL population and federal requirements, approximately 78,000 members are not voter protected.

Beyond membership, the second main determinant of AHCCCS costs is the benefit package. While the income limits established by Proposition 204 are voter protected, the level of capitation payments is not. Capitation rates are the monthly payments made to the health plans for each enrolled member. The federal government requires that the capitation rates be "actuarially sound" to finance the services provided. The federal government also requires that certain mandatory services be provided.

Within both the federally mandated and Proposition 204 programs AHCCCS provides optional services. The majority of spending on optional services is attributable to prescription drugs and ALTCS home and

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community based services. FY 2009 spending on optional services is estimated to be $277 million from the General Fund. However, of that amount $237 million is for ALTCS home and community based services and prescription drugs. If eliminated, cost savings would need to be re-estimated as it may cause higher costs in the long run. For example, if ALTCS home and community based services were eliminated, more AHCCCS recipients might be placed in nursing homes.

In summary, the projected FY 2009 cost for the AHCCCS program is $1.5 billion from the General Fund. After excluding mandatory populations and services, $425 million - $475 million is neither voter protected nor federally mandated (thereby leaving $992 million - $1.04 billion “protected”). However, as noted above, $237 million is for pharmacy and ALTCS optional services.

State Parks Board

Proposition 303 (“Growing Smarter”) from the November 1998 General Election requires $20 million to be deposited each year for 11 years (from FY 2001 through FY 2011) into the Land Conservation Fund administered by the State Parks Board (A.R.S. § 41-511.23). The annual $20 million deposit through FY 2011, therefore, is voter protected.

“Growing Smarter” monies are to be used to provide grants to purchase state trust land for conservation purposes. All grants must be matched by the public or private entity that is applying for the grant. Grant applications are reviewed by the Conservation Acquisition Board, which recommends grants to the State Parks Board.

Citizens Clean Election Commission

Proposition 200 (“Citizen’s Clean Elections”) from the November 1998 General Election established 2 individual income tax credits for contributions to the Citizens Clean Election Fund created by the Proposition. Those 2 credits are voter protected and have the effect of reducing state revenues. The first is a $5 tax credit that a taxpayer receives if they mark a check-off box on their individual income tax form indicating that they want $5 to be deposited into the Citizens Clean Election Fund. If checked, the Arizona Department of Revenue (ADOR) must grant the taxpayer a $5 credit and also transfer $5 to the Citizens Clean Election Fund, for a net state impact of $10. For FY 2007, ADOR indicates that the total amount attributed to the Clean Elections Fund check-off box was $6.1 million.

The second related credit pertains to voluntary contributions that a taxpayer may make to the Citizens Clean Election Fund pursuant to A.R.S. § 16-954(B). Such credits are limited to either 20% of the filers overall tax liability or $610 ($1,220 for a married couple filing jointly), whichever is more. In FY 2005, approximately $800,000 was claimed for this credit. This indicates that the total “voter protected” revenue impact from the 2 tax credits is approximately $6.9 million ($6.1 million + $0.8 million).

Proposition 200, however, also requires the Citizens Clean Elections Commission to transfer to the General Fund at least once per year any “excess” monies in the Citizens Clean Election Fund that it projects will not be needed for agency operations and election funding (A.R.S. §16-954.E). Such transfers likewise are voter protected and potentially can offset the negative revenue impact of the 2 tax credits described above. A total of $27.8 million has been transferred to the General Fund pursuant to A.R.S. §16-954(E), since establishment of the Citizens Clean Elections Commission in FY 2000.

Independent Redistricting Commission

At the November 2000 General Election, Arizona voters approved Proposition 106 which created the Independent Redistricting Commission (IRC) for the purpose of drawing new legislative and

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congressional district boundaries after each U.S. Census. Proposition 106 allocated $6 million from the General Fund to the IRC in FY 2001 for the purposes of redrawing the district lines following the 2000 Census. For future years, the proposition instructs the Arizona Department of Administration to submit to the Legislature a recommendation for adequate redistricting expenses. The Legislature is to make the necessary appropriations by a majority vote.

Non-General Fund Revenues

Voter protected non-General Fund spending affects the budgets of the following agencies: the Arizona Health Care Cost Containment System (AHCCCS), the Citizens Clean Elections Commission, Community Colleges, Universities, the Arizona Department of Education (ADE), the School Facilities Board (SFB), the Arizona Game and Fish Department, the Department of Gaming, the Department of Health Services (DHS), Early Childhood Development and Health Board, and the Office of Tourism. Voter-protected revenue for these 11 agencies for FY 2008 is estimated at approximately $1.18 billion (an agency may not expend all its revenues in a year). The revenue estimate for each agency is summarized in *Table 2*, and is described further below.

Table 2

Estimated FY 2008 Non-GF Voter Protected Revenues (millions)

Agency	
AHCCCS	$258.9
Clean Elections	8.6
Community Colleges	18.5
Early Childhood Development	161.9
ADE	549.1
Game and Fish	7.1
Gaming	13.3
DHS	10.8
SFB	65.8
Tourism	8.6
Universities	71.6
Total	**$1,174.3**

Since 2004, any ballot initiative must be funded from non-General Fund sources. Proposition 101 from the November 2004 General Election requires that any initiative must provide for an increased funding source sufficient to cover the costs of the proposal and that the increased funding cannot be derived from the state General Fund. Proposition 201 (Smoke-free Arizona Act) and Proposition 203 (Early Childhood Development), both passed in 2006, are the only ballot initiatives affected by Proposition 101.

AHCCCS

Proposition 202 from the November 2002 General Election established the Trauma and Emergency Services Fund, which receives 28% of the state's annual share of gaming proceeds from the Arizona Benefits Fund. Pursuant to A.R.S. § 36-2903.07 (C), monies in this fund are to only be used to reimburse hospitals for unrecovered trauma center readiness costs and unrecovered clinical, professional, and operational costs incurred while providing emergency services. AHCCCS reports that this fund will receive an expected $30.4 million in FY 2008 revenues.

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In the November 2000 General Election, Proposition 204 established the Tobacco Litigation Settlement Fund in AHCCCS to receive all monies the state receives under the tobacco litigation master settlement agreement entered into on November 23, 1998, plus interest on the fund. As one of the 46 states that entered into the master settlement agreement against the 4 largest cigarette manufacturers, Arizona receives an annual payment, adjusted for inflation, the volume of cigarette sales in the state, and the market share of non-participating manufacturers. As described above, Proposition 204 requires AHCCCS coverage for individuals up to 100% FPL, as well as funding for 6 public health programs. The fund has expected FY 208 revenues of $114 million.

Proposition 303 from the November 2002 General Election established the Tobacco Products Tax Fund, which includes the Proposition 204 Protection Account, the Medically Needy Account, and the Emergency Health Services Account in AHCCCS. The Medically Needy Account existed previously, but was reestablished as voter protected by this proposition. The fund and its sub-accounts receive revenue from a $0.60 per pack cigarette tax, along with taxes on various other tobacco products. The estimated FY 2008 revenue for each sub-account is shown in *Table 3*. AHCCCS will receive an estimated $114.8 million in Proposition 303 revenue in FY 2008.

Table 3

Estimated FY 2008 AHCCCS
Voter-Protected Revenue (millions)

Prop. 202	
Trauma and Emergency Services Fund	$30.4
Prop. 204	
Tobacco Litigation Settlement Fund	114.0
Prop. 303	
Prop. 204 Protection Account	54.0
Medically Needy Account	34.7
Emergency Health Services Account	25.7
Total	114.8
Grand Total	**$258.9**

Citizens Clean Elections Commission

Proposition 200 ("Citizens' Clean Elections") from the November 1998 General Election established the Citizens Clean Elections Fund to receive revenue from a new 10% surcharge on civil and criminal fines and penalties (A.R.S. § 16-954 (C)), along with monies associated with 2 individual income tax credits. Revenues from the income tax credits are treated as General Fund monies, as described in the previous section. The agency reports $8.6 million in expected FY 2008 revenues for this fund from the court fine surcharge.

Community Colleges

Proposition 301 from the November 2000 General Election increased the state sales tax rate by 0.6% through June 30, 2021. Of these revenues, 3% of the monies remaining after the payment of SFB debt service is transferred to the workforce development accounts of the Community Colleges. If a

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Community College is owned by an Indian tribe, then it receives an additional one-twelfth of the amount otherwise allotted to it. In FY 2008, an estimated $17.9 million will be expended for workforce development and $0.6 million for tribal assistance. These amounts are shown in *Table 4*.

Early Childhood Development and Health Board

Proposition 203 from the November 2006 General Election established the Early Childhood Development and Health Fund to receive revenue from a $0.80 per pack tobacco tax as well as various other increases on tobacco products. These monies are to be used for preschool, child care, parent and family education and support programs, and children's health programs. The monies are distributed so that up to 10% may be used for administrative costs, and of the remaining monies, at least 35% is to be spent on regional plans based on the population of children age 5 and younger in that region, at least 40% on regional plans based on the population of children whose families are under 100% FPL, and up to 25% on other regional programs. This fund has expected FY 2008 revenues of $161.9 million, but is not expected to expend most of these monies as it remains in start-up mode.

Arizona Department of Education

Proposition 301 from the November 2000 General Election increased the state sales tax rate by 0.6% through June 30, 2021. The revenue is distributed to ADE, in addition to the universities and community colleges, for various purposes. After the payment of school facility bonds, $86.3 million is to be used for additional school days each fiscal year after FY 2006, $7.8 million for school safety, $1.5 million for failing schools tutoring funds, and $25 million to reimburse the General Fund for the cost of the income tax credit allowed by A.R.S § 43-1072.01. Also, up to $7 million may be appropriated by the Legislature to pay for accountability measures (A.R.S. 42-5029 (E)(7)). After the payment of all the previous items, the remaining monies are to be transferred to the Classroom Site Fund for teacher compensation increases, maintenance, and operating expenses. The actual distribution of Proposition 301 funds for FY 2008 is shown in *Table 4*. Expected non-appropriated FY 2008 revenues for ADE are $474.9 million.

Proposition 202 from the November 2002 General Election established the Instructional Improvement Fund, which is to receive 56% of the state's share of gaming proceeds. Pursuant to A.R.S. § 15-978 (D), up to 50% of the amount allocated to each school district or charter school may be used for teacher salary increases and class size reductions. Funds not spent on these two purposes are to be used for dropout prevention and instructional improvement programs. Expected FY 2008 revenues are $49.2 million.

Table 4

Estimated FY 2008 Non-Appropriated Prop. 301 Revenues (millions)

ADE	**Amount**
Classroom Site Fund	$379.1
Additional School Days	86.3
School Safety	7.8
Failing Schools Tutoring Fund	1.5
Character Education Matching Grants	0.2
Total	$474.9
Community Colleges	
Workforce Development	17.9
Tribal Assistance	0.6
Total	$18.5

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School Facilities Board	
Debt Service	$65.8
Universities	
Technology and Research Initiative fund	$71.6
Other	
Income Tax Credit for Sales Tax Paid	25.0
Grand Total	**$655.9**

Arizona Game and Fish Department

In the November 2002 General Election, Proposition 202 established the Arizona Wildlife Conservation Fund, which is to annually receive 8% of the state's share of gaming proceeds. Pursuant to A.R.S. § 17-299 (C), the money is to be spent by the Arizona State Fish and Game Commission to conserve and protect Arizona's wildlife resources. Expected FY 2008 revenues for this fund are $7.1 million.

Department of Gaming

Proposition 202 from the November 2002 General Election established the Arizona Benefits Fund to be administered by the Department of Gaming (A.R.S. § 5-601.02 (H)(1)). The greater of $8 million or 9% of the state's annual share of gaming proceeds is to be deposited in the fund for the department's regulatory and administrative costs. In FY 2008, $8.6 million was deposited for this purpose. Additionally, 2% of the state's portion of gaming proceeds is to be allocated for the prevention and treatment of problem gaming. This fund will receive an estimated $13.3 million in revenues for FY 2008.

Department of Health Services

Proposition 303 from the November 2002 General Election established the Tobacco Products Tax Fund, which includes the Health Education Account and the Health Research Account in DHS. These two sub-accounts existed previously, but were reestablished under the Tobacco Products Tax Fund as voter-protected by this proposition. These two funds will receive an estimated $9.0 million in FY 2008 revenues.

Proposition 201 ("Smoke-free Arizona Act") from the November 2006 General Election established the Smoke-free Arizona Fund to receive revenue from a $0.02 per pack tobacco tax increase. Pursuant to A.R.S § 36-601.1 (L)(2), this money is to be used for the enforcement of the Smoke-Free Arizona Act. If money is remaining in the fund after the department has met its enforcement obligations, it is to be deposited in the Tobacco Products Tax Fund to be used only for tobacco-use education programs. The fund also receives any fines assessed by DHS on those in violation of this statute. In FY 2008, the fund will receive an expected $1.8 million in voter-protected revenue.

School Facilities Board

Proposition 301 from the November 2000 General Election increased the state sales tax rate by 0.6% through June 30, 2021. Pursuant to A.R.S. § 42-5029 (E), this revenue must first be used to pay the debt service up to $800 million in school improvement bonds. In FY 2008, $65.8 million was spent on debt service, as shown in *Table 4*.

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Office of Tourism

Proposition 202 from the November 2002 General Election requires 8% of the state's share of gaming proceeds to be deposited in the Tourism Fund annually. Pursuant to A.R.S. § 41-2306 (A)(4), these monies may only be used to promote tourism within the state. In FY 2008, the fund will receive an expected $8.6 million in revenues attributable to Proposition 202.

Universities

Proposition 301 from the November 2000 General Election increased the state sales tax rate by 0.6% through June 30, 2021. Of these revenues, 12% of the monies remaining after the payment of SFB debt service is to be transferred to the Technology and Research Initiative fund for the universities. In FY 2008, this amount is $71.6 million as shown in *Table 4*.

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